

Environmental Laws and Regulations

National Environmental Policy Act (NEPA):

The Act establishes national environmental policy goals for the protection, maintenance, and enhancement of the environment and it provides a process for implementing these goals within the federal agencies. The Act also establishes the Council on Environmental Quality (CEQ). The Act applies to NDDOT if federal funds or federal permits are required on construction projects.

The **CEQ** coordinates federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives. The CEQ reports annually to the President on the state of the environment and oversees federal agency implementation of the environmental impact assessment process.

Section 4(f) of the US Department of Transportation Act of 1966:

It is the policy of the United States government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The US DOT may approve a project requiring the use of publicly owned land of a park, recreation area, or wildlife and waterfowl refuge of national, state or local significance, or land from an historic site only if there is no prudent and feasible alternative to using that land and the project includes all possible planning to minimize harm to the resource resulting from such a use. The Department of Interior is responsible for the review and comment on Section 4(f) evaluations prepared by US DOT/NDDOT. Section 4(f) applies to federally funded NDDOT projects and the resources must be in public ownership.

Section 6(f) of the Land and Water Conservation Fund Act (LAWCON):

Section 6(f) of this act mandates that any site acquired or developed either partially or wholly, with LAWCON assistance must be retained in public outdoor recreation use in perpetuity. Conversion to any other use must receive prior approval of the National Park Service and would require a replacement of the converted lands and/or facilities with substitute lands and facilities of like kind, value, quality, and location. The NPS can approve a conversion only if it finds it to be in accord with the existing Statewide Comprehensive Outdoor Recreation Plan (SCORP). SCORP documents for the state of North Dakota are published by the North Dakota Parks and Recreation Department.

Executive Order 11990, Protection of Wetlands:

Establishes a national policy to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. The order further provides that each agency shall provide leadership to minimize the destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities. For major actions (EA/EIS) which entails construction in wetlands, a specific finding is required that there is no practicable alternative to construction in the wetland and that all practicable measures to minimize harm have been included.

Clean Water Act:

The purpose of this act is to restore and maintain the chemical, physical and biological integrity of the Nation's waters so they can support the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water.

Section 404 of this Act authorizes the Army Corps of Engineers to issue permits for construction projects that will include the discharge of dredged or fill material into the waters of the United States.

Section 401 of this Act authorizes the state Environmental Protection Agency to issue Water Quality Certification for project that warrant an Individual 404 Permit.

Federal Endangered Species Act:

The ESA sets forth the goal of conserving threatened and endangered species and the ecosystems upon which they depend. The Act establishes a process whereby Federal action agencies, their applicants, and the US Fish and Wildlife Service work together to ensure that proposed actions are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their designated critical habitats.

Fish and Wildlife Coordination Act:

The Act requires that fish and wildlife resources receive equal consideration with other project features. It also requires federal agencies that construct, license or permit water resource development projects to first consult with the USFWS and State fish and wildlife agency (Game and Fish) regarding the impacts to wildlife resources and measures to mitigate these impacts.

Migratory Bird Treaty Act:

A migratory bird is any species of family of birds that live, reproduce or migrate within or across international borders at some point during their annual life cycle. The Act implements the 1916 convention between the U.S. and Great Britain for the protection of birds migrating between the U.S. and Canada. Similar conventions between the U.S. and Mexico, Japan, and former Soviet Union further expanded the scope of international protection of migratory birds. These four treaties and their enabling legislation, the MBTA, establish Federal responsibilities for the protection of nearly all species of birds, their eggs and nests. Under the Act, taking, killing or possessing migratory birds is unlawful unless permitted by regulations. The U.S. FWS has responsibility for enforcing the Act.

Executive Order 13112, Invasive Species:

Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law, prevent the introduction and spread of invasive species. Consideration of invasive species should occur during all phases of the environmental process to fulfill the requirement of NEPA.

Wild and Scenic Rivers Act:

This Act establishes a national program that prescribes the methods and standards through which rivers can be evaluated and added to the system. The National Park System has compiled and maintains a Nationwide Rivers Inventory or candidate list of river segments that potentially qualify as national wild, scenic or recreational river areas. Each Federal agency must take care to avoid or mitigate adverse effects on rivers identified on the NRI. In North Dakota, the Little Missouri River, Missouri River, and Pembina River are listed within this program. All agencies are required to consult with the NPS prior to taking actions which could effectively foreclose wild, scenic or recreational status for rivers on the inventory or candidate list.

Executive Order 11988, Floodplain Management:

Requires Federal agencies to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. A proposed action that includes a significant encroachment will not be approved unless FHWA finds that the proposed significant encroachment is the only practicable alternative and this finding is published in the Environmental Assessment or Final Environmental Impact Statement.

Highway Beautification Act of 1965:

This Act provides effective control of outdoor advertising and junkyards, to protect the public investment, to promote the safety and recreational value of public travel and preserve natural beauty, and to provide landscapes and roadside development reasonably necessary to accommodate the traveling public.

Title VI of the Civil Rights Act of 1964:

Assures that individuals are not subjected to discrimination, excluded from participation in, or denied the benefits of Federally-funded projects or programs on the basis of race, age, color, sex, national origin, disability or religion.

Executive Order 12898 on Environmental Justice:

This EO directs that Federally- funded programs, policies, and activities not have a disproportionately high and adverse human health and environmental effect on minority and low-income populations.

Uniform Relocation Assistance and Real Property Acquisition Act of 1970:

Ensures that owners of business or residential properties to be displaced by Federal-aid projects are treated fairly, consistently and equitably.

23 USC 109(h) of the Highway Act of 1970:

This section of the Code requires the development of guidelines for consideration of social, economic and environmental effects of proposed highway projects. This includes impacts to air, noise and water quality along with community impacts such as cohesion, access to public facilities and services, adverse

employment, taxes or property values, displacement of people, businesses or farms, or the disruption of community and regional growth.

Federal Farmland Protection Policy Act of 1981:

This Act directs that State agencies minimize impacts to farmland and maximize compatibility with State and local farmland programs and policies.

National Historic Preservation Act of 1966:

This law requires that all Federally- funded, permitted or licensed projects be reviewed before work commences to determine whether they will affect historic properties, such as archaeological sites, buildings, and bridges.

Section 106 stipulates that it is the responsibility of the Federal agency to cooperate with the State Historic Preservation Officer in identifying historic properties, assessing their eligibility for listing on the National Register of Historic Places, determining if proposed projects will have an adverse effect on historic properties, and what actions need to be taken to mitigate any such adverse effects.

Clean Air Act:

This program was enacted to insure that Federally-funded projects attain established goals of air pollution reduction by submitting and complying with a State Implementation Plan.

23 CFR 772, FHWA Traffic Noise Standards:

This section of the Code establishes procedures for the abatement of highway traffic noise and construction noise. Federal regulations were developed to prescribe the methods that must be followed for the evaluation of highway traffic noise in Federal-aid projects. The FHWA must satisfactorily evaluate potential traffic noise impacts and address feasible and reasonable noise abatement alternatives. The subsequent FHWA Policy and Guidance “*Highway Traffic Noise Analysis and Abatement*” gave State transportation agencies the ability to develop their own policies.

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980:

To provide for the cleanup of inactive hazardous waste disposal sites and for the liability, compensation, cleanup and emergency response for hazardous substance released into the environment. This Act established the Federal Superfund program.

Resource Conservation and Recovery Act, 1976:

This Act aims to protect human health and the environment by prohibiting open dumping, managing solid wastes, and regulating the treatment, storage, transportation and disposal of hazardous wastes. This law focuses on active sites and allows the EPA to address leaking underground storage tanks.

